Transboundary Watercourses of the ASEAN Region
Perspectives and Prospects for International Water Law
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Transboundary Watercourses Around the World

• Approximately 286 transboundary watercourses and 592 transboundary aquifer systems (UNECE, 2021).

• Accounts for 60% of global freshwater flows, with 153 States having territory in one or more of these shared watercourses.


ASEAN Transboundary Waters

• 10 member States (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) seeking regional development and integration; borders 5 Non-ASEAN States (Bangladesh, China, India, Papua New Guinea and Timor-Leste).

• While the Mekong River has been heavily researched, these States share many transboundary watercourses and groundwaters that deserve closer attention.
When one thinks of ASEAN and transboundary waters you might think of the Mekong, but there are many basins and aquifers across the region...

21 Transboundary Surface Waters
• 9 between ASEAN States
• 12 between ASEAN and Non-ASEAN States

19 Transboundary Aquifers
• 10 between ASEAN States
• 9 between ASEAN and Non-ASEAN States

*collected from SDG 6.5.2 Reports, IGRAC 2021 map and Oregon State University Transboundary Freshwater Treaties Database.
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As transboundary watercourses they are governed under international law, composed of many layers...

  - Codified and progressively developed the rules of this field; reflective of **customary international law** in some respects.
- Regional Agreements – 2000 SADC Revised Protocol
- Multilateral and Bilateral Agreements,
- Non-binding instruments.
Most ASEAN States (apart from Vietnam) and their neighbours are not party to the global water conventions.

The ASEAN approach to transboundary water governance needs to be taken in consideration of the regional context and history.

- 1954 Five Principles of Peaceful Coexistence
- 1955 Ten Principles of Bandung
- 1967 ASEAN Declaration
- 2008 ASEAN Charter
While they could not participate in the drafting of the Water Convention, many participated in the drafting process of the Watercourses Convention (Cambodia, Malaysia, Thailand and Vietnam) and the 2008 Draft Articles on Transboundary Aquifers (Indonesia, Malaysia, Philippines and Vietnam).

• Commented on a series of rules/provisions of the Watercourses Convention and Draft Articles, illustrating their perspectives on these rules – Largely supportive sentiments; requesting stronger substantive rules (ERU/NSH) to protect small, developing States; requested strong dispute settlement mechanisms.

• All ASEAN States supported the draft of the Watercourses Convention at the UN General Assembly, however, only Vietnam has become party to the Watercourses Convention.

• Vietnam’s submitted a reservation when acceding to the Convention, protecting its choice of dispute settlement method.

• The Draft Articles remain a Draft, with ASEAN States generally not supporting of turning them into a binding convention.
While they are not party to the global water conventions, there are some agreements, instruments, and institutions through which ASEAN States govern their transboundary water resources. None, however, relate directly to transboundary aquifers.

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<tr>
<th>ASEAN-ASEAN</th>
<th>Agreement/Instrument</th>
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<tr>
<td>Cambodia, Laos, Thailand, Vietnam</td>
<td>1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin</td>
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<td>Malaysia, Thailand</td>
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<th>ASEAN-Non-ASEAN</th>
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<td>China-MRC</td>
<td>2020 MoU On the Provision of Hydrological Information of the Lancang River in Flood Season</td>
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<td>China, Cambodia, Laos, Myanmar, Thailand, Vietnam</td>
<td>Lancang-Mekong Cooperation (LMC) and related instruments</td>
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| China, Laos | 1993 Treaty on the Border System (Article 6)  
2014 Memorandum of Understanding on Cooperation in the Field of Cooperating Water Resources |
| Indonesia, Papua New Guinea | 1973 Agreement as to the Border between Papua New Guinea and Indonesia |
| Indonesia, Timor-Leste | 2017 Implementation Arrangement on Management of Trans Boundary Watersheds |
Preliminary Observations

- The ASEAN region shares many transboundary water resources between its members but also with non-member States, highlighting the possible role that ASEAN could play.
- While nearly all ASEAN States supported the Watercourses Convention, only Vietnam is party.
- Very few agreements between ASEAN States, but a growing number of agreements between ASEAN and its neighbours.
- How might the States move forward?

Accession to the global water conventions?  
ASEAN Regional Agreement?  
Multilateral/Bilateral Agreements?  
Non-Binding Instruments?